

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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TROY SMITH,

Plaintiff,

-v-

No. 9:10-CV-1502  
(DNH/DEP)

C. ROSATI, Correctional Officer, Great Meadow Correctional Facility; C. ST. JOHN, Correctional Officer, Great Meadow Correctional Facility; BRIAN FISCHER, Commissioner of Corrections; ANTHONY J. ANNUCCI, Chief Counsel, Deputy Commissioner; LUCIEN LECLAIRE, JR.; RICHARD ROY, Inspector General; C. FRASER, Sgt, Great Meadow Correctional Facility; GOODMAN, Lt., Great Meadow Correctional Facility; HARVEY, Commissioner's Hearing Officer; C.O. TORRES, Counselor, Great Meadow Correctional Facility; TED NESMITH, Physician Assistant; NURSE DAVID LINDEMANN, Registered Nurse, Great Meadow Correctional Facility; B. MARS, Laundry Supervisor, Great Meadow Correctional Facility; PAUL ZARNETSKI, Lt., Great Meadow Correctional Facility; and ALBERT PRACK, SHU Director, DOCCS,

Defendants.

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APPEARANCES:

OF COUNSEL:

TROY SMITH  
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MICHAEL G. McCARTIN,, ESQ.  
Ass't Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On February 20, 2013, the Honorable David E. Peebles, United States Magistrate Judge, advised, by Report-Recommendation that defendants' motion for partial summary judgment be granted in part and denied in part. Defendant Fraser timely filed objections to the Report-Recommendation.

Based upon a de novo review, the Report-Recommendation is accepted. See 28 U.S.C. § 636(b)(1).

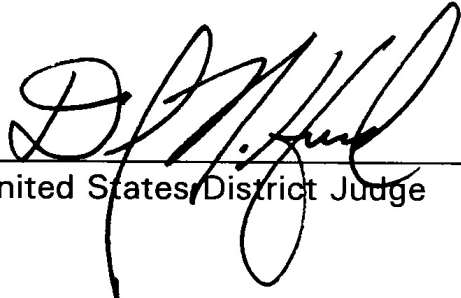
Therefore, it is

ORDERED that

1. Defendants' motion for partial summary judgment is GRANTED in part and DENIED in part; and

2. All claims against all defendants are DISMISSED with the exception of those asserted against defendants Rosati and St. John;<sup>1</sup> the failure to intervene claim against defendant Fraser; and the First Amendment retaliation claim against defendant Goodman.

IT IS SO ORDERED.

  
United States District Judge

Dated: April 10, 2013  
Utica, New York.

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<sup>1</sup> Defendants did not move for dismissal of the excessive force claim asserted against defendants Rosati and St. John.